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No. 335

In the Supreme Court of the United States

OCTOBER TERM, 1932

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, PETITIONER

v.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, petitioner

v.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of the Secretary of the Interior, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia, entered in the above-entitled cause on June 6, 1932 (R. 36), affirming a judgment of the Supreme Court of the District of Columbia awarding a writ of mandamus against the Secretary of the Interior.

OPINIONS BELOW

No opinion was rendered by the Supreme Court of the District of Columbia. The opinion of the

Court of Appeals of the District of Columbia (R. 34) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered June 6, 1932. (R. 36.) The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Secretary of the Interior erred, as a matter of law, in refusing to allow the items of respondent's claim under the War Minerals Relief Act of March 2, 1919, as amended, representing cost of certain machinery and plant equipment, salaries paid to corporate officers who were the sole stockholders of respondent corporation, and an amount paid for legal services which did not involve or contribute to the production of a war mineral.

STATUTES INVOLVED

These appear in the Appendix, *infra,* pp. 12–17.

STATEMENT

Pursuant to Section 5 of the Act of March 2, 1919, as amended, commonly known as the War Minerals Relief Act, the respondent filed a claim with the Secretary of the Interior for losses alleged to have been sustained in producing and in preparing to produce pyrites under the conditions

specified in that Act. (R. 2, 7.) Thereafter awards totaling $693,313.79 were allowed and paid to respondent, but various items of its claim were disallowed by the Secretary. (R. 28.)

Within the time limited by the Act of February 13, 1929 (*infra*, p. 16), respondent filed in the Supreme Court of the District of Columbia a petition for a writ of mandamus, seeking a review of the Secretary's final decision on questions of law arising in connection with his disallowance of certain items of respondent's claim. (R. 1–4, 22.)[1]

The case was submitted upon respondent's demurrer to petitioner's answer and supplemental answer, which fully set forth the facts. (R. 5, 6, 23, 30.) The trial court sustained the demurrer and ordered that a writ of mandamus issue directing the Secretary of the Interior to proceed with the final adjustment of the disputed items of respondent's claim, and "finally to adjust those items of the claim as items allowable under the * * * act of March 2, 1919, in accordance with the amounts due as determined by him." (R. 30.)

Upon an appeal to the Court of Appeals of the District of Columbia by the Secretary of the Interior, the judgment of the lower court was affirmed. (R. 34–36.)

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[1] The disallowance by the Secretary of the Interior of an item of interest included in respondent's claim was under consideration in *Work* v. *Chestatee Co.*, 267 U. S. 185, and *Wilbur* v. *Chestatee Corp.*, 284 U. S. 231, 237.

In this petition the Secretary is contesting the action of the courts below in respect of only three of the items in dispute in those courts. The pertinent facts with reference to these three items are set forth in the Secretary's answer and supplemental answer as follows:

(1) *Cost of Machinery and Plant Equipment.*—Respondent, the Chestatee Corporation, was incorporated on July 24, 1917, under the laws of Georgia, by G. L. Pratt and N. P. Pratt, who became its sole stockholders. (R. 25.) Prior to any request to produce a war mineral by an authorized agent of the Government, the Pratts had acquired certain equipment and machinery at a cost of $132,139.31, and had acquired certain tools and miscellaneous items at a cost of $16,901.07. (R. 20, 25.)

Subsequent to a request to produce by an agent of the Government, the Pratts turned over all of this property to respondent. (R. 25.)

In adjusting respondent's war minerals claim, the Secretary of the Interior allowed and paid the item of $16,901.07 in full, because it represented the value of articles which had been entirely lost through use in respondent's mining operations. (R. 20, 26.) He also allowed and paid, as a fair rental value, $58,481.13 on account of the use in the business of the corporation of the equipment and machinery, but he disallowed $73,658.18 representing the balance of the cost of the equipment and machinery. (R. 26.)

(2) *Salaries.*—The Pratts withdrew from the moneys of the corporation and distributed to themselves as salaries $25,966.67. They included this amount in the war-minerals claim filed by them and the corporation jointly as a loss sustained by the corporation in producing pyrites. (R. 9, 24–25.)

It appears from the record that so far as claimants who are individual owners or partners are concerned, the Secretary has taken the position that he is not bound to award whatever compensation the claimant sees fit to pay himself, and that it is his duty under the statute to make only such payment as he may deem just and equitable. He accordingly established a rate of $4 a day in such cases as a fair allowance for services upon the ground that the allowance of a greater sum might result in the awarding of profits. He followed the same practice in the instant case because of the Pratts' complete ownership of the respondent corporation, and allowed the corporation a total of $4,032 on account of the services of the Pratts. (R. 20–21.) He alleges that he determined, as a matter of fact, after due consideration, that this is all that the corporation, in justice and equity, was entitled to. (R. 25.)

(3) *Legal services.*—The Secretary disallowed an item of $585.75 paid by respondent for legal services, finding, as a matter of fact, that these services did not involve or contribute to the production of pyrites or any other war mineral. (R. 28.)

SPECIFICATION OF ERRORS TO BE URGED

The court below erred—

1. In directing the Secretary of the Interior to adjust as an item allowable under the Act of March 2, 1919, as amended, the cost of machinery and plant equipment which was acquired without request, demand, or other stimulation by any Government agency or officer, by persons who subsequent to April 6, 1917, and prior to November 12, 1918, organized and became the sole stockholders and incorporators of the respondent corporation and transferred to it the machinery and equipment in question upon the assumption by the respondent corporation of their obligation to pay for the property.

2. In directing the Secretary to adjust as an item allowable under the Act of March 2, 1919, as amended, salaries which the two incorporators, officers, and sole stockholders of the respondent corporation distributed to themselves from the funds of the respondent, even though the Secretary already had allowed and paid respondent corporation the amount which he had determined, as a matter of fact, was in justice and equity due it on account of the value of the services of the two stockholders.

3. In directing the Secretary to adjust as an item allowable under the Act of March 2, 1919, as amended, an amount paid by respondent for legal services which the Secretary found, as a matter

of fact, did not involve or contribute to the production of a war mineral.

4. In affirming the judgment against the Secretary entered by the Supreme Court of the District of Columbia.

REASONS FOR GRANTING THE WRIT

1. In requiring the Secretary to adjust the balance of the cost of machinery and plant equipment as an allowable item, the court below not only erred but completely ignored the real question presented by the pleadings. In its opinion it made no distinction between stimulated and nonstimulated transactions, but disposed of the issue by a reference to the decision of this Court in *Wilbur* v. *Vindicator, etc., Co.*, 284 U. S. 231, which patently is without bearing. The court, therefore, gave an improper effect to that decision.

The Pratts acquired the equipment and machinery in question before any request to produce a war mineral had been made of them by one of the Governmental agencies specified in Section 5 of the Act of March 2, 1919 (*infra*, p. 12), viz., prior to stimulation. Their purchase of the equipment and machinery was therefore a matter entirely outside of the scope of that Act. It was nothing more than an ordinary business transaction by the Pratts.

Thereafter, when a request to produce pyrites was made of the Pratts by an authorized agent of the Government, they could not alter the existing

status of their equipment and machinery by incorporating the Chestatee Pyrites & Chemical Corporation in which they became the sole stockholders and only officers, and then turning over the equipment and machinery to the corporation.

The War Minerals Relief Act deals with matters of fact and not with fictions of law, and for the purposes of an award under that Act the Chestatee Corporation had no better or different status with respect to a prestimulated transaction than its incorporators, who were its only stockholders, had, and it could acquire no higher rights under that Act than those which its incorporators were able to transfer to it.

Had the Pratts retained the equipment and machinery in question and proceeded to produce pyrites in their own names pursuant to a request of the Government's agent, they could have made no claim for loss on account of the purchase of the equipment and machinery, as such purchase was outside of the scope of the War Minerals Relief Act. All they could have claimed would have been the value of the use of the equipment and machinery when employed in producing pyrites. This the Secretary determined and allowed.

The question here is, then, whether the Pratts could place themselves in a better position than other claimants who owned equipment and machinery at the date of the Government's request to produce, by forming a close corporation composed of

themselves alone as stockholders, and then turning over their equipment and machinery to the corporation subsequent to the Government's request.

The Secretary of the Interior held that they could not do so, and that all that the Chestatee Corporation, as the *alter ego* of the Pratts, was in justice and equity entitled to receive on account of the equipment and machinery in question, was the fair value of its use, which the Secretary found as a matter of fact amounted to $58,481.13. That amount he allowed and paid to the Chestatee Corporation as a loss sustained by it in producing pyrites within the scope of the Act.

We believe that the Secretary's action was not erroneous, that the *Vindicator* decision has no bearing on the question presented, and that the question is one which merits consideration by this Court.

2. Despite the fact that the Secretary awarded to the respondent corporation on account of the services of the Pratts the amount which, after due consideration, he considered the corporation was in justice and equity entitled to receive, the decision below compels him again to consider the item, the court holding, in reliance upon the *Vindicator* decision, that the item is in the same category as interest paid on borrowed money.

In so holding, the court below evidently misunderstood the question at issue. This is not a case where the salary paid to an officer of a corporation was fixed pursuant to a *bona fide* contract of em-

ployment, and where the officer himself was unable to dictate the amount of his own compensation. Where officers, whose compensation is in question, own and control a corporation, the Secretary, in determining the loss suffered by the corporation through its operations in producing a war mineral, should undoubtedly consider and adjust the amount of the salaries the officers have fixed for themselves and make an equitable and just allowance for their services. But here the Pratts, in reliance upon the corporate fiction, are endeavoring to compel the Secretary to repay them indirectly, as the sole stockholders of their corporation, an arbitrary amount which they distributed to themselves, claiming that the corporation lost that amount in producing pyrites. The Secretary, in the exercise of statutory power to adjust the claim, has determined that in justice and equity the amount which should be allowed the corporation on account of the value of the Pratts' services and which should be considered as a loss sustained by the corporation in producing pyrites is $4,032. This was a finding of fact by the Secretary, and the exercise of his judgment and discretion in that respect may not, we submit, be controlled by mandamus, there being no showing that it was arbitrary or capricious.

We are advised that questions involving the Secretary's disallowance of salaries are presented in a number of suits now pending in the Supreme Court

of the District of Columbia, and that in one of these suits the precise question here presented is involved.

3. In holding that the Secretary was required to adjust the item of legal expenses as an allowable loss, the court below has failed to take into consideration the finding of fact of the Secretary that these services did not involve or contribute to the production of pyrites or any other war mineral. (R. 28.) The *Vindicator* decision, to which the court below refers in its opinion (R. 35), expressly recognizes that a loss to be allowable under the statute must be incurred in producing or preparing to produce a war mineral. (284 U. S. 238.)

A similar question, we are advised, is presented in 53 cases pending in the Supreme Court of the District of Columbia.

4. The questions presented involve the interpretation of an Act of Congress, the War Minerals Relief Act.

CONCLUSION

Wherefore, it is respectfully submitted that this petition should be granted.

THOMAS D. THACHER,
Solicitor General.

AUGUST, 1932.

APPENDIX

STATUTES INVOLVED

Act of March 2, 1919, known as the War Minerals Relief Act, c. 94, 40 Stat. 1272, 1274:

> SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."
>
> The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, in-

cluding personal services, traveling and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further,* That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen,

and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further,* That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further,* That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine

for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

Act of November 23, 1921, c. 137, 42 Stat. 322:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act approved March 2, 1919, entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: "*Provided,* That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said Act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said Act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said Act.

"If in claims passed upon under said Act awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts."

Act of February 13, 1929, c. 182, 45 Stat. 1166:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

SEC. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

SEC. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for certio-

rari or by appeal as provided by law and the rules of the court.

SEC. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

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